COUNTY OF LOS ANGELES
DEPARTMENT OF CONSUMER AFFAIRS

"To Enrich Lives Through Effective and Caring Service"

January 4, 2006

To: Supervisor Gloria Molina
Supervisor Yvonne B. Burke
Supervisor Zev Yaroslavsky
Supervisor Don Knabe

From: Pastor Herrera, Jr. Pastor
Director

Subject: **CABLE TELEVISION - VIDEO FRANCHISE LEGISLATION**

Enclosed is a copy of a report that was issued to Mayor Michael D. Antonovich as a result of a request received by the Fifth Supervisorial District.

My office recently briefed our Board liaisons with each of your offices on issues related to the information contained in this report. However, I believe each of your offices may be interested in additional background and the legislative activity that could impact local cable franchising authorities such as the County. Therefore, with the approval of the Fifth District, we are forwarding this report related to proposed Federal and State video franchise legislation to each of your offices as well.

Should you have any questions regarding the legislative activity, please contact Jonathan Freedman of the Chief Administrative Office at 213-974-1643. If you have questions regarding cable franchising related issues, please contact Fern Taylor, of my staff at 213-974-2711.

Enclosure: Report on Video Franchise Legislation

c: Michael D. Antonovich, Mayor
David E. Janssen, Chief Administrative Officer
Jonathan Freedman, Asst. Division Chief, CAO
Fern Taylor, Chief, Telecom. Franchising, DCA
Grace Chang, Deputy County Counsel

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DAVID E. JANSSEN
Chief Administrative Officer

December 22, 2005

To: Mayor Michael D. Antonovich

From: David E. Janssen,
Chief Administrative Officer

Pastor Herrera, Jr.
Director, Consumer Affairs

REPORT ON VIDEO FRANCHISE LEGISLATION

This is in response to your request of November 23, 2005 to monitor the progress of video franchise legislation and to alert you if the legislation affects current Board Cable Television policy. We are monitoring Federal and State legislation that would affect local franchising authority and preempt the County's authority to manage the public rights-of-way. Specifically, the Department of Consumer Affairs (DCA) recommends opposition to Federal proposals which are discussed below. State legislation, however, consists largely of statements of intent in anticipation of industry negotiations and/or Federal action.

BACKGROUND

Telephone companies, such as AT&T (formerly SBC) and Verizon, are lobbying to change both State and Federal law to give them greater latitude to compete in the video marketplace. These actions have the potential to alter the authority of local authorities to regulate and grant franchise agreements.

DCA is the local authority for 36 cable television franchises in the unincorporated areas of Los Angeles County. These franchise agreements generate annual revenues of approximately $4 million for the County. Additionally, DCA grants nonexclusive cable television franchise agreements, approves transfers between cable operators, and evaluates the franchises for compliance with relevant laws. Under current law, if telephone companies intend to provide cable/video services in the unincorporated County areas, they are required to obtain either a cable or open video system franchise from the County.

FEDERAL PROPOSALS

Three key legislative proposals, S. 1504, S 1349, and H.R. 3146 have been introduced in Congress.

As introduced on July 27, 2005, S. 1504 (Ensign, R-NV) would create Federal franchising rules governing video service providers (VSPs) that would essentially pre-empt local government franchising authority. Specifically, among its many provisions, S. 1504 would exempt VSPs from a requirement to obtain a state or local video franchise; prohibit the imposition of requirements related to the build-out of VSP systems, and authorize state and local government to recover the cost of managing public rights-of-way used by VSPs. Congressional Quarterly indicates that S. 1504 is intended to allow large telephone companies such as Verizon and SBC to begin roll-out of TV service via their broadband networks.

On June 30, 2005, companion bills S.1349 (Smith, R-OR and Rockefeller, D-WV), and HR 3146 (Blackburn, R-TN and Wynn D-MD), were introduced, and while similar to the Federal franchising contained in S. 1504, these bills would provide that no video services company may be required by Federal, State or local law, to obtain a franchise in order to provide video programming, interactive on-demand services, or any other video service. A representative of the National League of Cites testified before the House Energy and Commerce Committee that these bills would cripple the ability of local governments to manage the public rights-of-way and block efforts to ensure that communication services are available to everyone.

Additionally, there is a House Energy and Commerce Committee proposal entitled the Broadband Internet Transmission Services (BITS II) that would:

- Preempt local governments' franchise authority over traditional telephone providers entering the local video market by having the FCC, rather than cities or counties, grant franchises to phone companies to provide video or cable-like service;

- Preempt local government's longstanding authority to collect rent for use of public rights-of-way by significantly decreasing cable franchise fees and by excluding advertising and other non-subscriber revenues from franchise fees and deny the 5 percent franchise fee for public access channels or institutional networks to local governments;

- Allow limited service to customers and deny local governments the authority to require buildout of video/cable services to all citizens, regardless of race, age, income or location within a reasonable timeframe; and prohibit all regulation (federal, state and local) of Internet-based phone companies that are not expressly allowed by the bill.

A coalition comprised of the U.S. Conference of Mayors, National League of Cities, National Association of Counties, National Association of Telecommunications Officers and Advisors, and Government Finance Officers Association testified before Congress in opposition to any proposal that would preempt local government's rights to manage and charge for the use of the public rights-of-way.

Although there was no action on these proposals this year, the Senate Commerce Science and Transportation Committee plans to consider telecommunications legislation early next year.

DCA indicates that the Federal proposals would preempt the County's franchise authority over traditional telephone providers entering the local video market by having the Federal Communications Commission, rather than local governments, grant franchises to phone companies to provide video or cable-like service. Additionally, it would preempt local government's longstanding authority to collect rent for use of public rights-of-way, and would put at-risk the County's $4 million in annual revenues from cable franchises. **Therefore, DCA recommends the County oppose these proposals, and we concur.** Opposition to these proposals is consistent with Board policy to oppose preemption of local control and allow the County to negotiate compensation from telecommunications companies for the use of rights-of-way. We will take an oppose position on these proposals via the CAO's Washington, D.C. Update memorandum to the Board.

STATE PROPOSALS

Three legislative proposals AB 903, AB 1547, and SB 909 that address local franchising authority have been introduced in the Legislature.

As amended on May 31, 2005, AB 903 (De La Torre) would allow a telephone corporation to obtain a local cable television franchise from the local franchising authority for an area within the telephone corporation's service territory, and allow existing cable providers to revise their franchise agreements. It would also require local government to assure that access to cable services provided by a telephone company is not denied to any group of potential residential cable subscribers because of their income. According to the author's office, AB 903 is intended to promote competition for broadband and video service.

AB 903 is supported by Verizon, the California Chamber of Commerce, Communication Workers of America, Long Beach Chamber of Commerce and opposed by the California Cable and Telecommunications Association, Charter Communications, Comcast, Cox Communications, SBC and Adelphia Communications. On May 31, 2005, AB 903 was re-referred to the Assembly Committee on Utilities and Commerce and no hearing date has been set.

As amended on July 12, 2005, AB 1547 (Levine) is an expression of legislative intent by declaring the public interest is best served when competition occurs in the marketplace, that fairness be applied with respect to State mandates and rules that govern the provision of communication services, and that the public interest is better served when there is widespread access to multiple communications providers who compete fairly in the marketplace. AB 1547 passed the Committee on Energy, Utilities and Communications by a vote of 10 to 0, on July 11, 2005 and was placed in the inactive file. No hearing date has been set and there is no registered support or opposition.

As amended on August 18, 2005, SB 909 (Escutia) would declare legislative intent to establish fair competition in the areas of telecommunications and video services as a policy for telecommunications in the State, require fair treatment with respect to state-mandated regulations, promote lower prices and broader consumer choices to avoid anticompetitive conduct, and would focus efforts to provide educational institutions, health care institutions, community-based organizations, and governmental institutions with access to advanced telecommunication services. SB 909 passed the Assembly Committee on Utilities and Commerce unanimously on September 8, 2005. No hearing date has been set and there is no registered support or opposition.

At this time, it appears these three legislative proposals are place holders bills while the telephone and cable providers and interested parties negotiate changes to State law, and consider the potential implications if Federal legislation is enacted. We will continue to monitor these bills, and report on developments as appropriate.

If you have any questions or would like additional information, please contact Jonathan Freedman of my staff at (213) 974-1643.

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